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9
10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**

12 In re:

CASE NO.: 8:23-bk-10571-SC
Chapter 11

13 THE LITIGATION PRACTICE GROUP, P.C.,

14 Debtor.

15 **MOTION BY CREDITOR WELLS MARBLE**
16 **AND HURST, PLLC, FOR ALLOWANCE**
17 **OF ADMINISTRATIVE CLAIM PURSUANT**
18 **TO 11 U.S.C. § 503**

19 Date of Hearing: January 19, 2024
20 Hearing Time: 11:00 a.m.
21 Ctrm: 5C/Via Zoom
22 411 W. Fourth Street
23 Santa Ana, California 9270

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25 TO THE HONORABLE JUDGE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY
26 COURT JUDGE, THE UNITED STATES TRUSTEE, AND ALL INTERESTED PARTIES.

27 Kevin A. Rogers, attorney for Wells Marble and Hurst, PLLC, a creditor herein, pursuant to
28 the Order Approving Stipulation Between Chapter 11 Trustee, Office of the United States Trustee, the
Official Committee of Unsecured Creditors to Set Administrative Bar Date [Dk. No. 577], moves for
an order allowing and ordering payment of an administrative claim for by Wells Marble and Hurst,
PLLC, for local counsel services provided to the estate pursuant to 11 U.S.C. § 503, or as otherwise
provided by law, as follows.

29 **INTRODUCTION**

30 1. The most vulnerable parties connected to this bankruptcy proceeding are those
individual clients of The Litigation Practice Group (“LPG”) who enrolled in the LPG program (“LPG
clients”). Critical to the LPG program was that LPG clients would be provided representation by local

counsel when sued by creditors in various jurisdictions; otherwise, a creditor would take a judgment, begin collection, and irreparably harm the LPG clients. To that end, LPG entered into different arrangements with a number of attorneys in various jurisdictions to provide such services. With regard to those LPG clients sued in Mississippi and Alabama, LPG entered into a contractual arrangement under which Wells Marble and Hurst, PLLC (“WMH”), through Kevin A. Rogers, would provide such local representation for an hourly fee.

STATEMENT OF FACTS

3. WMH, through Kevin A. Rogers, an attorney licensed to practice in Mississippi and Alabama, began provided local representation to LPG clients sued in Mississippi in June of 2020 and in Alabama in March of 2021, on a contract basis for an hourly rate, with regular billing statements submitted to and paid by LPG. See Exhibit A, Declaration of Kevin A. Rogers, ¶¶ 5-7.

5. On March 22, 2023, Kevin Rogers was contacted by Ty Carrs, on behalf of Phoenix Law, P.C., and agreed to continue to provide legal representation to those LPG (or former LPG)

clients in pending litigation in Mississippi and Alabama, and the parties subsequently entered into an Engagement Agreement to provide such services on a contract basis at an hourly rate of \$240/hr. Ex. B, ¶¶9-10, and Ex. 1 to Ex. B. WMH has not received any payment from Phoenix. Ex. B, ¶11.

6. After the petition was filed, WMH received an additional 28 new lawsuits for LPG (or former) LPG clients in Mississippi and Alabama, out of which 17 have been settled. Ex. B, ¶12.

7. The post-petition services provided by WMH as local counsel consisted of filing answers to complaints, filing and responding to motions, appearing at court-ordered hearings or trials, negotiating favorable settlements, or obtaining dismissals of lawsuits. Ex. B, ¶13.

8. These services were necessary to avoid judgments being entered against these individuals. Ex. B, ¶14.

9. The most vulnerable parties connected to this bankruptcy proceeding are those clients who enrolled in the LPG program with the expectation that if a lawsuit was filed against them, local representation would be provided. Many of these clients were elderly, on a fixed income, or had limited financial means, and, therefore, they would have had nowhere else to turn if representation in pending matters was not provided. Ex. B, ¶15.

10. Accordingly, it was necessary to continue to provide legal services to those clients after the filing of the bankruptcy petition. The filing of the bankruptcy petition had no effect on pending legal matters for those individuals, including deadlines and hearing dates. Had WMH not provided such legal services for pending matters, judgments would have been entered and collection actions would have begun, which would have irreparably prejudiced those individuals. Ex. B, ¶16.

11. Therefore, the post-services provided by WMH substantially and directly benefitted the estate by preventing judgments from being entered against those clients during the pendency of this bankruptcy proceeding, which preserved the value of the estate for the subsequent sale to the Morning Law Group. Ex. B, ¶17.

12. In addition, with regard to these clients, WMH served as the only consistent reliable point of contact with those clients for during the bankruptcy proceeding. Many clients had difficulty finding anyone who could answer their questions or concerns. WMH was able to point these clients in the right direction, as well as assure them that their cases were being handled. Ex. B, ¶18.

1 13. WMH kept itemized billing records for services provided, copies of which have been
2 previously provided to the Chapter 11 Trustee and to Phoenix. Ex B, ¶20.

3 14. The documents attached to the Declaration have been redacted so as to protect the
4 privacy of those individuals who were provided representation as local counsel. See Exs. 2-5 to Ex. B.
5 WMH is willing to provide additional documentation pursuant to an appropriate order protecting the
6 privacy of such individuals. The documents attached show the following:

7 a. WMH's fees for services provided from March 20, 2023 to May 8, 2023 was
8 \$23,504.00.

9 b. WMH's costs and expenses incurred for services provided from March 20, 2023 to
10 May 8, 2023 was \$1,959.77.

11 c. WMH's fees for services provided from May 9, 2023 to August 4, 2023 was
12 \$41,453.00.

13 d. WMH's costs and expenses incurred for services provided from May 9, 2023 to
14 August 4, 2023 was \$869.37.

15 e. WMH's total fees are \$64,957.00, total costs and expenses are \$2,829.14, and total
16 claim for post-petition services is \$67,786.14.

17 15. WMH provided such post-petition services as local counsel until August 4, 2023, at
18 which time some clients had been transferred to the Morning Law Group.

19 16. The fee charged by WMH to provide local counsel services is fair and reasonable under
20 Mississippi and Alabama Law. Ex. B, ¶20. See Miss. R.P.C., 1.5(a) and Ala. R.P.C. 1.5(a).

21 17. The post-petition services provided by WMH from March 20, 2023 to August 4, 2023,
22 constitute an administrative expense pursuant to 11 U.S.C. § 503.

23 **MEMORANDUM OF AUTHORITIES**

24 18. Under 11 U.S.C. § 503(b)(1)(A), after notice and a hearing, there shall be allowed
25 administrative expenses including, "the actual, necessary costs and expenses of preserving the estate"
26 which includes, but is not limited to, "wages, salaries and commissions for services rendered after the
27 commencement of the case."

28 19. Administrative status is allowed when a claim (1) is incurred postpetition, (2) directly

1 and substantially benefits the estate, and (3) is an actual and necessary expense.” *Gull Indus., Inc. v.*
2 *Mitchell (In re Hanna)*, 168 B.R. 386, 388 (B.A.P. 9th Cir. 1994). A claimant must show that the debt
3 asserted to be an administrative expense arose from a transaction with the debtor-in-possession or
4 trustee as opposed to the preceding entity or that the claimant gave consideration to the debtor-in-
5 possession or trustee and that the claim directly and substantially benefitted the estate. *In re DAK*
6 *Indus.*, 66 F.3d 1091, 1094 (9th Cir.1995).

7 **ARGUMENT**

8 20. The post-petition services provided by WMH are entitled to administrative expense
9 status and should be paid as an administrative expense.

10 21. First, WMH is only seeking administrative status for the services provided post-
11 petition, and WMH will be filing a proof of claim for unpaid services provided pre-petition.

12 22. Second, WMH’s local representation of LPG clients was an actual and necessary
13 expense to preserve the estate and protect those clients who had enrolled in the LPG program. The
14 filing of the bankruptcy petition in this matter did not delay, stay or abate pending deadlines and court
15 hearings set in Mississippi and Alabama state court proceedings. Nor did the filing of the petition stay
16 creditors from filing new lawsuits against such individuals. Therefore, it was necessary for WMH to
17 provide local representation to protect those individuals from judgments and collection actions, which
18 would have irreparably prejudiced those individuals. WMH sought to provide such representation as
19 expeditiously as possible to protect those vulnerable individuals.

20 23. Third, WMH’s representation, through the agreement with Phoenix, was a transaction
21 with the debtor-in-possession, or alternatively, WMH’s representation constitutes consideration
22 provided to the estate. The \$240 hourly rate charged by WMH was fair and reasonable for the services
23 provided.

24 24. Fourth, WMH’s representation directly and substantially benefitted the estate by
25 protecting LPG clients. By providing continued representation post-petition, this preserved the value
26 of the estate for the pending sale to the Morning Law Group. Had WMH (and other local counsel)
27 ceased provided such representation, this would have undoubtedly made LPG clients less likely to
28 continue with the program, and it would have devalued the estate asset. WMH also provided an

1 additional value to the estate by serving as point of contact for clients.

2 Accordingly, for the reasons set forth herein, WMH respectfully moves for this Court (a) to
3 allow an administrative expense claim in the amount of \$67,786.14, pursuant to 11 U.S.C. § 503; (b)
4 to provide that WMH's is entitled to administrative priority pursuant to 11 U.S.C. § 503 and 11 U.S.C.
5 § 507(a)(2); (c) to order that WMH's administrative claim be paid and; (d) any additional or
6 alternative relief this Court deems just and proper.

7 DATED this 20th day of November, 2023.

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9 **WELLS MARBLE & HURST, PLLC**

10 /s/ Kevin A. Rogers

11 KEVIN A. ROGERS (admitted pro hac vice)

12 Attorney for Wells Marble and Hurst, PLLC
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